IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2406 OF 2006

Janakraj Gupta ...Petitioner

V/s.

Deputy Chief Controller of Imports and Exports, Bombay & Anr. ...Respondents

Mr.R.M. Tiwari for Petitioner.
Mr.Y.M. Nakhawa APP for the State.

CORAM : V.M. KANADE, J.

DATED : 23rd AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner.

2. Petitioner takes exception to the order passed by the Sessions Court, Gr. Mumbai, dated 18/04/2001 whereby charge has been framed by the Additional Sessions Judge for the offences punishable U/s.120-B of IPC r/w Section 5 of the Imports and Exports (Control) Act 1947. Respondent/Deputy Chief Controller of Imports and Exports in his reply has stated that case has been instituted otherwise than on Police Report and, therefore, charge cannot be framed without recording pre-charge evidence as per provisions of Section 244 of Cr.P.C.

3. In my view, Sessions Court has clearly committed an error of law which is apparent on the face of record, by framing charge on the warrant triable case which is instituted otherwise than on Police Report by framing charge without allowing the prosecution to record the pre-charge evidence as laid down U/s.244 of Cr.P.C.

4. In my view, impugned order of framing charge will have to be set aside. Matter is remanded back and Sessions Court to follow procedure U/s.244 of Cr.P.C. and, thereafter hearing the learned counsel for the accused and the prosecution, to frame the charge in accordance with law or discharge the accused, if no case is made out.

. Writ Petition is disposed of in the above terms.

V.M. KANADE, J.